

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 BARRY LAMON,

No. CIV S-03-0423-FCD-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 LYTLE, et al.,¹

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. Pending before the court are plaintiff's requests to file an amended pre-
19 trial statement (Docs. 208 and 210). In his first request (Doc. 208) filed on February 6, 2008,
20 plaintiff references a proposed amended pre-trial statement submitted on February 6, 2008 (Doc.
21 209). In his second request (Doc. 210) filed on February 11, 2008, plaintiff references a
22 proposed pre-trial statement attached to that request. Good cause appearing therefor, the requests
23 to submit an amended pre-trial statement are granted. The amended pre-trial statement (Doc.
24 _____

25 ¹ On February 4, 2008, the district judge issued an order resulting in the dismissal
26 of Hawthorne and Pliler as defendants to this action. The remaining defendants are Lytle,
Loredo, Murphy, and Scicluna.

209) is stricken in favor of the second amended pre-trial statement attached to plaintiff's February 11, 2008, filing. This amended pre-trial statement supersedes the original pre-trial statement (Doc. 203) submitted by plaintiff on January 11, 2008.

Plaintiff has also requested the appointment of counsel (Doc. 211). The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not at this time find the required exceptional circumstances. Therefore, the request will be denied.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's requests to file an amended pre-trial statement (Docs. 208 and 210) are granted;

2. The pre-trial statement (Doc. 209) filed on February 6, 2008, is stricken in favor of the pre-trial statement attached to plaintiff's February 11, 2008, filing and supersedes the original pre-trial statement (Doc. 203) filed on January 11, 2008;

3. Plaintiff's motion for appointment of counsel (Doc. 211) is denied; and

4. The Clerk of the Court is directed to update the docket to reflect that Lytle is now the lead defendant.

DATED: February 14, 2008


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE